IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1464 OF 2004

Mansing Balwant Mane & Anr. ...Petitioners

Versus

Smt. Malan Gulabrao Mane & Anr ...Respondents

.....

Mr. Dilip Bodke, counsel for Petitioners

Ms. Varsha Palav, counsel for Respondents

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CORAM: B. H. MARLAPALLE, J.

DATED: 1ST APRIL, 2005

P. C.:-

1. Heard Mr. Bodke, the learned counsel for the petitioners who are impleaded as defendants in R.C.S. No. 110 of 2003. An application at Exh.5 for temporary injunction filed in the suit came to be allowed by the learned Jt. C.J.J.D. at Karad vide his order dated 10.7.2003. The said order was carried in Misc. Civil Appeal No. 51 of 2003 which also came to be dismissed on 5.12.2003 and hence, this petition.

2. There is no dispute that the western side of the portion admeasuring 38 R of the suit land was the subject matter of alleged encroachment. The subject lands were consolidated in Gut No. 1495 which was 1

Hector and 35 R and the consolidation scheme was implemented in the year 1973-74. The land gut No.1495 was subsequently compromised in new gut No. 757 and as per the mutation entry No. 356 the land under gut No. 1495 was entered in the name of Balwant Mane and his brother Vishwanath Mane as per the order of the Tahsildar and this was the basis of the contentions of the defendants in support of their claim for possession. As per the plaintiffs the land was their ancestral property and by virtue of mutation entry 357 effected in 1989 the name of Mr. Gulab Mane was entered into the Revenue record to the extent of 4 Ana 6 Paise and the same mutation entry was certified by the Circle Officer, Umbraj on 21.10.1989. By virtue of mutation entry No. 937 certified in 1995 the name of the plaintiff No.1 was entered in the record of the suit land. The extracts of the land account indicated that a portion of 19 R. each was standing in the name of plaintiffs. An affidavit of Mr. Tukaram who was the adjacent land owner was filed and the affidavit indicates that the measurement was carried on 7.4.2000 by the surveyor from the office of T.I.L.R. Karad and the portion of 32 R was in possession of the plaintiff.

3. This prima facie evidence relied upon by both the courts below was sufficient to accept the contentions of the plaintiff that they were in possession of the

encroached portion as on the day when the suit was filed and till filing of the suit none of the mutation entries supporting the case of the plaintiffs were challenged by the defendants. Hence, the concurrent findings of both the courts below do not call for any interference in this petition under Article 227 of the Constitution of India.

4. Hence, the petition is rejected summarily.